43. (UNCHANGED) The method of claim 42 wherein said antibody is conjugated to a cytotoxic agent.

## SEQUENCE LISTING

Please amend the application to include the Sequence Listing submitted herewith.

## REMARKS

### I. CLAIM AMENDMENTS

Prior to a first Office Action on the merits of this application, Applicants request that original claims 1, 3, 4, 24, 26, 27 and 36 be amended. These amendments, which incorporate reference to the Sequence Listing submitted herewith, do not involve any new matter or objectionable changes, and their entry is respectfully requested. When the Examiner takes this application up for action, he is requested to take the foregoing into account.

### II. SEQUENCE LISTING REQUIREMENT

At page 2 of the Office Action, it is noted that the application fails to comply with the requirements of 37 CFR 1.821-1.825 relating to nucleotide and/or amino acid sequence disclosures. In response, Applicants submit herewith, in paper and computer readable form, a Sequence Listing in compliance with 37 CFR 1.821-1.825. Applicants assert that the content of the paper and computer readable copies of the sequence listing are the same and introduce no new matter. Entry of the Sequence Listing is respectfully requested.

### III. RESTRICTION REQUIREMENT

The Office Action dated December 15, 2000 required restriction of the claims into 11 claim groups. In response, Applicants elect Group I, namely claims 1-3 and 22-23, with traverse. Applicants dispute the assertion by the Office that the 11 claim groups involve separate and distinct inventions.

35 U.S.C. §121 provides that "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of

the inventions." M.P.E.P. §802.01 deviates from the plain meaning of "independent and distinct" by interpreting "and" to mean "or". The Patent Office relies on the absence from the legislative history of anything contrary to this interpretation as support for their position that "and" means "or". Applicants respectfully note that this position is contrary to the rules of statutory construction. Restriction between two dependent inventions is not permissible under the plain meaning of 35 U.S.C. §121.

The Examiner does not assert that the inventions of the 11 claim groups are independent. Rather, the Examiner alleges that the inventions of the 11 claim groups are distinct because they are directed to products and process of use, or to separate and distinct products made by different methods or used in materially different methods, or to methods differing in their objectives, steps, reagents used, and criteria for success. By this reasoning, however, any two claims would either relate to distinct inventions or be duplicative, depending on whether they defined subject matter having distinct structural and functional characteristics.

Applicants further urge the Examiner take into consideration that the subject matter of each of the claim groups is linked by a common inventive concept. As noted in the specification at page 3, line 33 to page 4, line 2, the invention relates to a novel family of cell surface serpentine transmembrane antigens, designated STEAP, that are expressed in prostate and in prostate cancer. The human STEAP proteins exhibit a high degree of structural conservation among them, but show no significant structural homology to known human proteins. This inventive concept is common to all of the subject matter of claims 1-43. Even if the subject matter of Groups 1-11 are regarded as distinct, it is not clear how separate significant search efforts would be required to evaluate the patentability of all claims relating to a single novel molecule. At the very least, a search of the art relating to Groups I, III, and IV, all of which relate to the novel STEAP-2 protein and antibodies directed against STEAP-2, could be completed with a single search effort directed at the protein, and rejoinder of these groups for examination is respectfully requested.

According to M.P.E.P. §803, there are two criteria for a proper restriction requirement. First, the two inventions must be independent and distinct. In addition, there must be a serious burden on the Examiner if restriction is not required. Even if the first criterion has been met in the present case, which it has not, the second criterion has not been met.

Applicants assert that a search into prior art with regard to the invention of the different groups is so related that separate significant search efforts should not be necessary. Accordingly,

there is no serious burden on the Examiner to collectively examine the different claim groups of the subject application. Therefore, restriction is not proper under M.P.E.P. §803.

Consequently, Applicants respectfully request the Examiner reconsider and withdraw the restriction requirement. .It is also submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicants' undersigned attorney.

Respectfully submitted,

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By their attorneys,

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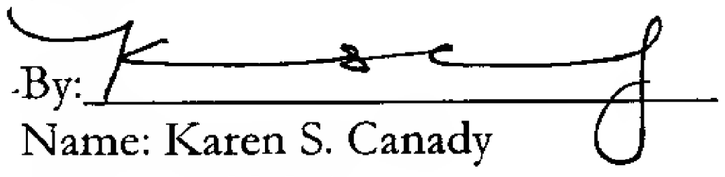
By: 
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